

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | |
|-----------------------------|---|--------------------------------|
| In re Application of: |) | |
| Frédéric FORTIN et al. |) | Group Art Unit: 3775 |
| |) | |
| Application No.: 10/760,075 |) | Examiner: Woodall, Nicholas W. |
| |) | |
| Filed: January 18, 2004 |) | |
| |) | |
| For: FLEXIBLE VERTEBRAL |) | Confirmation No.: 1916 |
| LINKING DEVICE |) | |

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(c)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(c), Applicants bring to the attention of the Examiner the documents on the attached listing. This Information Disclosure Statement is being filed after the events recited in Section 1.97(b) but, to the undersigned's knowledge, before the mailing date of either a Final action, Quayle action, or a Notice of Allowance. Under the provisions of 37 C.F.R. § 1.97(c), this Information Disclosure Statement is accompanied by a fee of \$180.00 as specified by Section 1.17(p).

Copies of the listed foreign and non-patent literature documents are attached.
Copies of the U.S. patent publications are not enclosed.

U.S. Patent Application Publication No. 2007/0149909 A1 to Fortin et al. is related to U.S. Patent Application No. 10/524,174, which is commonly assigned to the Assignee of the present application. Likewise, U.S. Patent Application Publication No.

2005/0165396 A1 to Fortin et al. is related to U.S. Patent Application No. 10/505,469, which is commonly assigned to the Assignee of the present application.

The United States Court of Appeals for the Federal Circuit held in *Dayco Products, Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 66 U.S.P.Q.2d 1801 (Fed. Cir. 2003) that an "adverse decision" by another examiner may meet the materiality standard under the amended Rule 56, and thus, Applicants should disclose prior rejections of "substantially similar claim[s]" to the Office. Accordingly, although Applicants are not representing that the Office Actions in the co-pending applications are material to the present application and are not admitting that any of the other claims are substantially similar, out of an abundance of caution, Applicants have listed the Office Actions in co-pending Application Nos. 10/524,174 and 10/505,469 on the attached PTO/SB/08 and copies are attached.

With respect to the non-English language documents, Applicants have the following remarks:

1. **DE 195 00 202 A1:** An English language abstract of this document is submitted herewith.
2. **EP 0576379 A1:** An English language abstract of this document is submitted herewith.
3. **FR 2717370 A1:** An English language abstract of this document is submitted herewith.
4. **FR 2730156 A1:** An English language abstract of this document is submitted herewith.

5. **FR 2774581 A1**: An English language abstract of this document is submitted herewith.

6. **FR 2 814 936**: An English language abstract of this document is submitted herewith.

7. **WO 98/22033**: An English language abstract of this document is submitted herewith.

Applicants respectfully requests that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claims in the application and Applicants determine that the cited documents do not constitute "prior art" under United States law, applicants reserve the right to present to the office the relevant facts and law regarding the appropriate status of such documents.

Applicants further reserve the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please
charge the fee to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: February 18, 2009

By: Nicholas S. Stroeher
Nicholas S. Stroeher
Reg. No. 62,926
(617) 452-1647